IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 19755 of 2007(B)

AGAINST THE ORDER DATED 12/06/2007 IN IA 105/2007 IN EOP.21/2005 of M.C.,WADAKKANCHERRY

.....

PETITIONER:

RAMLA SULAIMAN, W/O.SULAIMAN,
KALLUNGAL VEEDU, PADINJATTUMURI DESOM,
KADANGODE VILLAGE, THALAPPILLY TALUK.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT:

AYSHA ABOOBACKER, W/O.ABOOBACKER,
KOYABATTA PEEDIKAYIL VEEDU,
PADINJATTUMURI DESOM, KADANGODE VILLAGE,
THALAPPILLY TALUK.

BY ADV. SRI.K.RAMAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/07/2007 ALONG WITH WPC.NO.20392 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)Nos.19755 & 20392 OF 2007

Dated this the 5th July, 2007.

JUDGMENT

W.P(C)19755/07 is filed against the order of the Munsiff Court, Wadakkanchery in I.A.105/07 in Election O.P.21/05. By the order the learned Munsiff held that he is satisfied that the inspection of the ballot papers and marking of the same are imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. In the petition averments are to the effect that nine persons had their names in two wards of the same panchayat and they had exercised votes in both the wards and thereby as per the law those votes are void and therefore it will materially affect the result of the election. The next contention is that there were about eight minors who had cast vote which is also per se illegal and that has also to be interfered with. A perusal of the election petition itself would reveal that details regarding the persons who are alleged to have voted twice in two wards and the name of the persons who were minors had been elaborately and specifically pleaded in the election petition. I am informed that the successful candidate won by a majority of only two votes. So this 17 votes will have a definite say on the ultimate result if it

is found to be true and correct. Firstly the legal principle to be followed in these matters are brought to my notice by the learned counsel appearing for the parties. I may first refer to the decision which deals with the secrecy of ballot and when it can be looked into. In the decision reported in **Rajankumar Shankarrao Teware v. Ajit Anantrao Pawar** {(2002) 4 SCC 631} the Apex Court held that the ballot papers can be looked into if the following conditions exist:-

(i) the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Election Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of ballot papers is necessary.

If these two ingredients are satisfied there is no embargo in looking into the ballot papers. In the decision reported in **Kuldip Nayar v. Union of India** {(2006)7 SCC 1} the Court considered about the secrecy of the ballot papers. The Apex Court held that the principle of secrecy is not an absolute principle. The secrecy of ballot is a vital principle for ensuring free and fair elections. The higher principle however is free and fair elections and

purity of elections. If secrecy becomes a source for corruption then the sunlight and transparency have the capacity to remove it. So, in order to have an appreciation of all these materials the relevant facts of each case has to be looked into. The learned Munsiff had not done anything in haste. Evidence had been let in prima facie to show that the names of persons stated in the petition figures in two wards of the same panchayat and prima facie the identity of the person is also looked into. When these factors are considered then it becomes necessary to find out whether these persons exercised their franchise in both the wards. If they exercised the franchise in both the wards then it goes without saying that their votes are void as far as both the wards are concerned. So the prima facie satisfaction that is necessary for looking into the ballot papers arise when the Election Tribunal is satisfied that the name figures in two voters list and that the identity of the persons are the same and lastly for the purpose of making sure that they have voted in both these booths the ballot papers shall have to be looked into. I had gone through the order of the learned Munsiff and he has relied upon the evidence of persons which is relevant for consideration. Learned counsel for the writ petition has brought to my notice the decision reported in **Vikheshe**

Sema v. Hokishe Sema (AIR 1996 S.C.1942). In that case the court held that there cannot be double voting and just because a person's name figures in two constituencies one shall not come to the conclusion that the vote exercised by him is void because it is imperative to prove that he has cast his vote in both the constituencies. The next decision brought to my notice is the decision reported in **O. Bharathan v. K.Sudhakaran** (AIR 1996 SC 1140) which deals with the question that the court shall not try to arrive at a decision of its own by mere comparison of the signature. Then the learned counsel had brought to my notice the decision of the Apex Court in **T.A.Ahammed Kabeer v. A.A.Azeez** {(2003)5 SCC 650} paragraphs 26 and 27. There a close reading would reveal that it is not as a matter of course to allow anybody to inspect the ballot papers but it can be only allowed sparingly and there must be precise allegations. Lastly the learned counsel had also cited before me the decision of this court in **Dominic v. Gopalakrishnan** (1993(2) KLT 88). It was a case where the elction was with respect to the post of chairman and the question involved was that the method of exercising the franchise was by putting an 'x' mark whereas it was not found in one of those votes but it was done in some other mark. The Division Bench found that the Election Tribunal

without looking to the prima facie aspects even immediately opened the ballot box and found the same. The appellate court said that since the marking is only to express the intention of a person in favour of a person, one should not throw out it by a wrong mark and, therefore, held in favour. The Division Bench held that the learned Election Tribunal has committed a procedural mistake and therefore it has to be interfered with.

2. On the other hand learned counsel for the respondent had referred to the decision of the Constitution Bench in **Kuldip Nayar v. Union of India** {(2006)6 SCC 1} wherein the Court also referred to the decision of Neelalohithadasan Nadar's case. The High Court of Kerala while deciding the election followed the procedure that when it is found that there are double votes the method is to find out whether such double votes had been cast and then remove it from the zone of consideration and thereafter count the balance and declare the result. So, in order to find out the same it becomes necessary to scrutinise the ballot papers and that practice was upheld by the Apex Court as well in that case.

3. Now, coming to the facts of this case there is a crystal clear specific pleading in the election petition itself about the casting of double votes by nine persons

and casting of votes by minor persons. The court below was conscious of the secrecy of the ballot and the court wants to consider the validity of the same only after getting prima facie satisfied of the double voting. It is true that the ballot papers have been marked through P.W.1 but the order which is under challenge and the petition which is the basis was filed as early as on 12.1.2007 but it was disposed of only in June 2007, So the principles embodied in the decisions were borne in mind by the petitioner at the time of filing of the petition itself and only on the basis of the same the matter has been proceeded with. It has to be stated that in a case of double voting it is imperative to find out whether the same person has cast vote in two places. Without looking into the ballot papers it cannot be decided. Only on deciding that the court can remove it from the zone of consideration of valid votes and find out the real result. So, I think the procedure adopted is not illegal and it is really necessary for to arrive at a decision. Therefore I do not find any mistake committed by the court below in allowing that application and therefore the writ petition lacks merits and it is dismissed.

4. Now the next to be considered is W.P(C)20392/07. There an application was filed directing the court to

consider about the maintainability of the petition itself on the ground that the petition had not been properly filed in tune with the provisions of the Kerala Panchayat Raj Act or in other words the dispute that had cropped up for consideration is whether the election petitioner has filed a proper application and whether there is disparity in her signature that has to be taken note of. In this case the election petitioner has been examined as P.W.1. She had deposed before the court that she used to write her name as Ayisha Aboobacker or Ayisha and thereafter put her signature. She has specifically stated that she had signed in all the pages and it is her signature that is found in the election petitions and the other petitions. It has also to be stated at this stage that though an elaborate counter statement is filed nowhere any challenge is there regarding the fact that the election petitioner has not signed the petitions. A perusal of the writing and signature would show that she is not a very educated lady and she writes her name in Malayalam and puts her signature. Just because the name is written as Ayisha Aboobacker and at another place it is written as Ayisha one cannot jump to the conclusion that she had not signed the petitions in accordance with law. The court below was satisfied that it is the very same person who had affixed

her signature and therefore found that it cannot be thrown out under Section 93 of the Kerala Panchayat Raj Act 1994. I do not find any illegality or irregularity committed by the court below in arriving at a decision and the order is only to be confirmed. I do not find any merit in this writ petition. Therefore both the writ petitions are dismissed.

M.N.KRISHNAN
Judge

jj